

Optometrist Certification of Therapy Plans of Care

The Federal Register [64 FR 59410](#), dated November 2, 1999 initially highlighted the limitation on the ability for an optometrist to certify therapy services. The text below is taken directly from that portion of the Federal Register.

“F. Optometrist Services

The provisions of OBRA 1986 expanded coverage for optometrist services. While this statutory provision had been implemented through manual provisions, we had not revised the regulations to reflect this change. We proposed to revise the regulations at [42CFR§ 410.23](#) (Limitations on services of an optometrist) to specify that Medicare Part B pays for the services of a doctor of optometry, acting within the scope of his or her license, if the services would be covered as physicians' services if performed by a doctor of medicine or osteopathy. The American Optometric Association supported the proposed revision to the regulations.

Comment: The American Occupational Therapy Association (AOTA) asked that we clarify that optometrists may certify and recertify a beneficiary's need for occupational therapy services. According to AOTA, conforming changes should be made to [Sec. 424.11\(e\)](#) (Limitation on authorization to sign statements) and relevant manual provisions on physician certification procedures for outpatient therapy. AOTA states that the proposed Sec. 410.23 codifies the statutory provision that places optometrists in the same category as other physicians. Therefore, if a service is within the optometrists' lawful scope of practice, they contend it is permissible for a doctor of optometry to certify and recertify a beneficiary's need for occupational therapy services.

Response: Section 1861(r)(4) of the law provides that an optometrist is a physician only with respect to the provision of items or services described in section 1861(s)." **Because certification and re-certification are not services described in section 1861(s), we believe that the law does not permit optometrists to be considered physicians for the performance of these functions.** We are changing the text of the regulation (Sec. 410.23) to more directly reflect the language of the law.”

The certification and plan of treatment requirements are statutorily outlined in the [42CFR424.24](#). This text outlines the need for certification and re-certification to be completed (amongst other practitioners) by the physician. To date, optometrists have not been included in the list of providers who can “sign statements” or certify care. ([See § 424.11\(e\)42CFR.](#))

e) Limitation on authorization to sign statements. A certification or recertification statement may be signed only by one of the following:

- (1) A physician who is a doctor of medicine or osteopathy.
- (2) A dentist in the circumstances specified in Sec. 424.13(c).
- (3) A doctor of podiatric medicine if his or her certification is consistent with the functions he or she is authorized to perform under State law.
- (4) A nurse practitioner or clinical nurse specialist, as defined in paragraph (e)(5) or (e)(6) of this section, in the circumstances specified in Sec. 424.20(e).

To the lay practitioner, this issue may be confusing, if only considering the parameters for a physician to be able to write a referral for evaluation/treatment. The definition of a referral can be found in CMS's website at the Q & A segment at:

<http://www.hcfa.gov/medlearnfaqs/faqphys.htm>

In general, a referral means a request for, or the ordering of, a Designated Health Service (DHS) by a physician.

However the authority to certify and recertify is not part of the authority to refer and approve plans of treatment in 1861 (p) (2). It is in Section 1835(a) of the Social Security Act; and Section 221 of the BBRA of 1999 did not define optometrists as physicians for purposes of that section.

The above sections have been highlighted in an attempt to clarify the letter of the law versus the spirit of the law in order to avoid any potential claim rejections due to improper billing.

Statutory Authority for Physician Services

[Title XVIII of the Social Security Act, Section 1861\(r\)](#). The term "**physician**", when used in connection with the performance of any function or action, means (1) a **doctor of medicine** or osteopathy legally authorized to practice medicine and surgery by the State in which he performs such function or action (including a physician within the meaning of section [1101\(a\)\(7\)](#)), (2) a doctor of dental surgery or of dental medicine who is legally authorized to practice dentistry by the State in which he performs such function and who is acting within the scope of his license when he performs such functions, (3) a doctor of podiatric medicine for the purposes of subsections (k), (m), (p)(1), and (s) of this section and sections 1814(a), 1832(a)(2)(F)(ii), and 1835 but only with respect to functions which he is legally authorized to perform as such by the State in which he performs them, (4) a **doctor of optometry**, but only for purposes of subsection **(p)(1)**^[352] with respect to the provision of items or services described in subsection (s) which he is legally authorized to perform as a doctor of optometry by the State in which he performs them, or (5) a chiropractor who is licensed as such by the State (or in a State which does not license chiropractors as such, is legally authorized to perform the services of a chiropractor in the jurisdiction in which he performs such services), and who meets uniform minimum standards promulgated by the Secretary, but only for the purpose of sections 1861(s)(1) and 1861(s)(2)(A) and only with respect to treatment by means of manual manipulation of the spine (to correct a subluxation) which he is legally

authorized to perform by the State or jurisdiction in which such treatment is provided. For the purposes of section [1862\(a\)\(4\)](#) and subject to the limitations and conditions provided in the previous sentence, such term includes a doctor of one of the arts, specified in such previous sentence, legally authorized to practice such art in the country in which the inpatient hospital services (referred to in such section [1862\(a\)\(4\)](#)) are furnished.

Title XVIII of the Social Security Act § 1861s

Medical and Other Health Services

(s) The term "medical and other health services" means any of the following items or services:

- (1) physicians' services;
- (2)(A) services and supplies (including drugs and biologicals which are not usually self-administered by the patient)^[353] furnished as an incident to a physician's professional service, of kinds which are commonly furnished in physicians' offices and are commonly either rendered without charge or included in the physicians' bills;
- (B) hospital services (including drugs and biologicals which are not usually self-administered by the patient)^[354] incident to physicians' services rendered to outpatients and partial hospitalization services incident to such services;
- (C) diagnostic services which are--
 - (i) furnished to an individual as an outpatient by a hospital or by others under arrangements with them made by a hospital, and
 - (ii) ordinarily furnished by such hospital (or by others under such arrangements) to its outpatients for the purpose of diagnostic study;
- (D) outpatient physical therapy services and outpatient occupational therapy services;
- (E) rural health clinic services and Federally qualified health center services;
- (F) home dialysis supplies and equipment, self-care home dialysis support services, and institutional dialysis services and supplies;
- G) antigens (subject to quantity limitations prescribed in regulations by the Secretary) prepared by a physician, as defined in section [1861\(r\)\(1\)](#), for a particular patient, including antigens so prepared which are forwarded to another qualified person (including a rural health clinic) for administration to such patient, from time to time, by or under the supervision of another such physician;
- (H)(i) services furnished pursuant to a contract under section [1876](#) to a member of an eligible organization by a physician assistant or by a nurse practitioner [as defined in subsection (aa)(5)] and such services and supplies furnished as an incident to his service to such a member as would otherwise be covered under this part if furnished by a physician or as an incident to a physician's service; and
- (ii) services furnished pursuant to a risk-sharing contract under section [1876\(g\)](#) to a member of an eligible organization by a clinical psychologist (as defined by the Secretary) or by a clinical social worker (as defined in subsection (hh)(2)), and such services and supplies furnished as an incident to such clinical psychologist's services or clinical social worker's services to such a member as would otherwise be covered under this part if furnished by a physician or as an incident to a physician's service;

(I) blood clotting factors, for hemophilia patients competent to use such factors to control bleeding without medical or other supervision, and items related to the administration of such factors, subject to utilization controls deemed necessary by the Secretary for the efficient use of such factors;

(J) prescription drugs used in immunosuppressive therapy furnished, to an individual who receives an organ transplant for which payment is made under this title^[355];

K)(i) services which would be physicians' services if furnished by a physician (as defined in subsection (r)(1)) and which are performed by a physician assistant (as defined in subsection (aa)(5)) under the supervision of a physician (as so defined) and which the physician assistant is legally authorized to perform by the State in which the services are performed, and such services and supplies furnished as incident to such services as would be covered under subparagraph (A) if furnished incident to a physician's professional service; and but only if no facility or other provider charges or is paid any amounts with respect to the furnishing of such services,

(ii) services which would be physicians' services if furnished by a physician (as defined in subsection (r)(1)) and which are performed by a nurse practitioner or clinical nurse specialist (as defined in subsection (aa)(5)) working in collaboration (as defined in subsection (aa)(6)) with a physician (as defined in subsection (r)(1)) which the nurse practitioner or clinical nurse specialist is legally authorized to perform by the State in which the services are performed, and such services and supplies furnished as an incident to such services as would be covered under subparagraph (A) if furnished incident to a physician's professional service, but only if no facility or other provider charges or is paid any amounts with respect to the furnishing of such services;

(L) certified nurse-midwife services;

(M) qualified psychologist services;

(N) clinical social worker services (as defined in subsection (hh)(2));

O) erythropoietin for dialysis patients competent to use such drug without medical or other supervision with respect to the administration of such drug, subject to methods and standards established by the Secretary by regulation for the safe and effective use of such drug, and items related to the administration of such drug;

(P) prostate cancer screening tests [as defined in subsection (oo)];

(Q) an oral drug (which is approved by the Federal Food and Drug Administration) prescribed for use as an anticancer chemotherapeutic agent for a given indication, and containing an active ingredient (or ingredients), which is the same indication and active ingredient (or ingredients) as a drug which the carrier determines would be covered pursuant to subparagraph (A) or (B) if the drug could not be self-administered;

(R) colorectal cancer screening tests (as defined in subsection (pp));

(S) diabetes outpatient self-management training services (as defined in subsection (qq));^[356]

(T) an oral drug (which is approved by the Federal Food and Drug Administration) prescribed for use as an acute anti-emetic used as part of an anticancer chemotherapeutic regimen if the drug is administered by a physician (or as prescribed by a physician)--

- (i) for use immediately before, at, or within 48 hours after the time of the administration of the anticancer chemotherapeutic agent; and
- (ii) as a full replacement for the anti-emetic therapy which would otherwise be administered intravenously;^[357]
- (U)^[358] screening for glaucoma (as defined in subsection (uu)) for individuals determined to be at high risk for glaucoma, individuals with a family history of glaucoma and individuals with diabetes; and^[359]
- (V) medical nutrition therapy services (as defined in subsection (vv)(1)) in the case of a beneficiary with diabetes or a renal disease who--
 - (i) has not received diabetes outpatient self- management training services within a time period determined by the Secretary;
 - (ii) is not receiving maintenance dialysis for which payment is made under section 1881; and
 - (iii) meets such other criteria determined by the Secretary after consideration of protocols established by dietitian or nutrition professional organizations;^[360]
- (3) diagnostic X-ray tests (including tests under the supervision of a physician, furnished in a place of residence used as the patient's home, if the performance of such tests meets such conditions relating to health and safety as the Secretary may find necessary and including diagnostic mammography if conducted by a facility that has a certificate (or provisional certificate) issued under section 354 of the Public Health Service Act^[361]), diagnostic laboratory tests, and other diagnostic tests;
- (4) X-ray, radium, and radioactive isotope therapy, including materials and services of technicians;
- (5) surgical dressings, and splints, casts, and other devices used for reduction of fractures and dislocations;
- (6) durable medical equipment;
- (7) ambulance service where the use of other methods of transportation is contraindicated by the individual's condition, but only to the extent provided in regulations;^[362]
- (8) prosthetic devices (other than dental) which replace all or part of an internal body organ (including colostomy bags and supplies directly related to colostomy care), including replacement of such devices, and including one pair of conventional eyeglasses or contact lenses furnished subsequent to each cataract surgery with insertion of an intraocular lens;
- (9) leg, arm, back, and neck braces, and artificial legs, arms, and eyes, including replacements if required because of a change in the patient's physical condition;
- (10)(A) pneumococcal vaccine and its administration and, subject to section 4071(b) of the Omnibus Budget Reconciliation Act of 1987,^[363] influenza vaccine and its administration; and
- (B) hepatitis B vaccine and its administration, furnished to an individual who is at high or intermediate risk of contracting hepatitis B (as determined by the Secretary under regulations);
- (11) services of a certified registered nurse anesthetist (as defined in subsection (bb));

(12) subject to section 4072(e) of the Omnibus Budget Reconciliation Act of 1987^[364], extra-depth shoes with inserts or custom molded shoes with inserts for an individual with diabetes, if--

(A) the physician who is managing the individual's diabetic condition (i) documents that the individual has peripheral neuropathy with evidence of callus formation, a history of pre-ulcerative calluses, a history of previous ulceration, foot deformity, or previous amputation, or poor circulation, and (ii) certifies that the individual needs such shoes under a comprehensive plan of care related to the individual's diabetic condition;

(B) the particular type of shoes are prescribed by a podiatrist or other qualified physician (as established by the Secretary); and

(C) the shoes are fitted and furnished by a podiatrist or other qualified individual (such as a pedorthist or orthotist, as established by the Secretary) who is not the physician described in subparagraph (A) (unless the Secretary finds that the physician is the only such qualified individual in the area);

(13) screening mammography (as defined in subsection (jj));

(14) screening pap smear and screening pelvic exam; and

(15) bone mass measurement (as defined in subsection (rr)).

No diagnostic tests performed in any laboratory, including a laboratory that is part of a rural health clinic, or a hospital (which, for purposes of this sentence, means an institution considered a hospital for purposes of section [1814\(d\)](#)) shall be included within paragraph (3) unless such laboratory--

(16) if situated in any State in which State or applicable local law provides for licensing of establishments of this nature, (A) is licensed pursuant to such law, or (B) is approved, by the agency of such State or locality responsible for licensing establishments of this nature, as meeting the standards established for such licensing; and

(17) (A) meets the certification requirements under section 353 of the Public Health Service Act;^[365] and

(B) meets such other conditions relating to the health and safety of individuals with respect to whom such tests are performed as the Secretary may find necessary.

There shall be excluded from the diagnostic services specified in paragraph (2)(C) any item or service (except services referred to in paragraph (1)) which would not be included under subsection (b) if it were furnished to an inpatient of a hospital. None of the items and services referred to in the preceding paragraphs (other than paragraphs (1) and (2)(A)) of this subsection which are furnished to a patient of an institution which meets the definition of a hospital for purposes of section [1814\(d\)](#) shall be included unless such other conditions are met as the Secretary may find necessary relating to health and safety of individuals with respect to whom such items and services are furnished.

Reference segments for certification

1861 p) The term "outpatient physical therapy services" means physical therapy services furnished by a provider of services, a clinic, rehabilitation agency, or a public health agency, or by others under an arrangement with, and under the supervision of, such provider, clinic, rehabilitation agency, or public health agency to an individual as an outpatient--

- (1) who is under the care of a physician (as defined in paragraph (1), (3), or (4)^[351] of section [1861\(r\)](#)), and
- (2) with respect to whom a plan prescribing the type, amount, and duration of physical therapy services that are to be furnished such individual has been established by a physician (as so defined) or by a qualified physical therapist and is periodically reviewed by a physician (as so defined);

1835 (a)(2) a physician certifies (and re-certifies, where such services are furnished over a period of time, in such cases, with such frequency, and accompanied by such supporting material, appropriate to the case involved, as may be provided by regulations) that--

- (A) in the case of home health services (i) such services are or were required because the individual is or was confined to his home (except when receiving items and services referred to in section [1861\(m\)\(7\)](#)) and needs or needed skilled nursing care (other than solely venipuncture for the purpose of obtaining a blood sample) on an intermittent basis or physical or speech therapy or, in the case of an individual who has been furnished home health services based on such a need and who no longer has such a need for such care or therapy, continues or continued to need occupational therapy, (ii) a plan for furnishing such services to such individual has been established and is periodically reviewed by a physician, and (iii) such services are or were furnished while the individual is or was under the care of a physician;